

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
SBC's and VarTec's Petitions for)	WC Docket No. 05-276
Declaratory Ruling Regarding the)	
Application of Access Charges to)	
IP-Transported Calls)	

**COMMENTS OF GLOBAL CROSSING
TELECOMMUNICATIONS, INC.**

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Summary

1. Under SBC's federal access tariffs, an originating carrier, such as Global Crossing, is not a "customer" of SBC because it never subscribed to or ordered any terminating access services from SBC. Therefore, an originating carrier cannot be liable for terminating access charges.

2. The Commission's access charge rules, as interpreted in the *AT&T Order* or otherwise, do not make an originating IXC liable for terminating access charges.

3. As SBC itself confirms in the SBC Petition, industry practice does not support SBC's litigation position that each and every IXC in the call path is individually, jointly and severally liable for paying terminating access charges.

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**COMMENTS OF GLOBAL CROSSING
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Introduction

Pursuant to the Commission's Public Notice,¹ Global Crossing Telecommunications, Inc. ("Global Crossing") submits these comments on the petitions of SBC² and VarTec³ regarding the applicability of terminating access charges to IP-transported calls.⁴

SBC filed its petition in response to a referral from the United States District Court for the Eastern District of Missouri (the "Court") on the issue of whether UniPoint

¹ Public Notice, DA 05-2514, *Pleading Cycle Established for SBC's and VarTec's Petitions for Declaratory Ruling Regarding the Application of Access Charges to IP-Transported Calls*, WC Dkt. 05-276 (Sept. 26, 2005).

² *Petition of the SBC ILECs for Declaratory Ruling that UniPoint Enhanced Services, Inc., d/b/a PointOne and Other Wholesale Transmission Providers Are Liable for Access Charges* (filed Sept. 21, 2005) ("SBC Petition").

³ *In the Matter of Petition for Declaratory Ruling that VarTec Telecom, Inc. Is Not Required to Pay Access Charges to Southwestern Bell Telephone Company or Other Terminating Local Exchange Carriers When Enhanced Service Providers or Other Carriers Deliver the Calls to Southwestern Bell Telephone Company or Other Local Exchange Carriers for Termination* (filed Aug. 20, 2004) ("VarTec Petition").

⁴ The very existence of these petitions, the concomitant litigation that currently exists on this subject and a variety of related topics all demonstrate the crying need for the Commission to address inter-carrier compensation reform. The decades-old, subsidy-ridden access charge regime has far outlived its usefulness. The Commission should act on inter-carrier compensation reform promptly and in a manner that promotes economic rationality.

Enhanced Services, Inc. (“UniPoint”) is an “interexchange carrier” (“IXC”) within the meaning of section 69.5 of the Commission’s rules.⁵

SBC’s federal district court action against UniPoint is not the only one that it has brought in seeking to recover on access charge tariff-based claims against IXCs and others responsible for carrying interexchange traffic. It also commenced an action against AT&T that it subsequently dismissed voluntarily.⁶ In addition, SBC commenced an action against Global Crossing, among other parties, in the Court.⁷

In the *Global Crossing* action, SBC, in essence, alleges that Global Crossing, as an *originating* IXC that hands off interexchange calls to one or more “Least Cost Routers” or “Alternative Termination Providers,” is liable to SBC for paying *terminating* access charges. In that action, Global Crossing has moved to dismiss SBC’s amended complaint and that motion remains pending. No party has invoked primary jurisdiction before the Court to request that the Court refer the *Global Crossing* case to the FCC; the case is currently pending before the Court.

⁵ *Southwestern Bell Telephone, LP v. VarTec Telecom, Inc.*, No 4:04cv1303, *slip op.* (E.D. Mo. Aug. 23, 2005), annexed to the SBC Petition as Exhibit A.

SBC originally commenced this action against VarTec, UniPoint and Transcom Enhanced Services, LLC (“Transcom”). *See id.*, Complaint, annexed to the SBC Petition as Exhibit B. VarTec and Transcom subsequently filed for protection under Chapter 11 of the Bankruptcy Code, thereby staying SBC’s action against those two parties. During the course of the Transcom Chapter 11 proceedings, the United States Bankruptcy Court for the Northern District of Texas concluded that Transcom was an enhanced services provider (“ESP”) and thus not subject to access charges pursuant to the Commission’s ESP exemption. *See In re Transcom Enhanced Services, LLC*, No. 05-31929-HDH-11, *slip op.* at 8-12 (Bankr. N.D. Tex. April 28, 2005), *appeal docketed* (May 5, 2005). Transcom, in all relevant respects, offers the same type of IP-transport services as does UniPoint.

⁶ *See Southwestern Bell Telephone, LP v. AT&T Corp.*, No. 4:04cv474, Order (E.D. Mo. April 24, 2005).

⁷ *See Southwestern Bell Telephone, LP v. Global Crossing Limited*, No. 4:04cv1573, First Amended Complaint (E.D. Mo. Feb. 4, 2005).

Global Crossing is filing these comments because the FCC's actions in this proceeding, and any language in its Order, almost certainly would have great significance for the outcome of the case against Global Crossing and the telecommunications industry's access charge regime.

The SBC Petition principally raises the issue of whether UniPoint is an IXC or is an ESP. If UniPoint is an IXC, then, under section 69.5 of the Commission's rules, UniPoint is subject to terminating access charges. If UniPoint is an ESP, then, under prevailing precedent, it is exempt from access charges.

The VarTec Petition raises a separate issue: *assuming that an entity like UniPoint is an IXC subject to terminating access charges*, is VarTec, the originating IXC, liable for those charges on traffic it delivers to another IXC, which then hands off that traffic to SBC for termination into the local exchange. *See* VarTec Petition at 3-6.⁸

The two issues are independent, and the resolution of each would have different consequences. If the Commission, for example, decides that UniPoint is an ESP, then terminating access charges would not be due *at all* on any traffic handled by UniPoint as the terminating IXC. In that case, the Commission should deny the SBC petition on the merits and should dismiss the VarTec petition as moot. If, however, the Commission concludes that UniPoint is an IXC that must pay terminating access charges, that decision, standing alone, would *not* resolve the issue of *which of the one or more other IXCs* in the call flow posited by SBC, if any, is liable to SBC for paying terminating access charges. That is the issue that is the subject of the VarTec Petition and is raised squarely in SBC's case against Global Crossing.

⁸ VarTec also raises other issues in its petition that are not germane to this discussion.

Global Crossing's principal interest in this proceeding is the resolution of the second issue. In its case against Global Crossing, SBC is seeking to recover millions of dollars of terminating access charges from Global Crossing, the originating IXC, under theories based on SBC's federal and state access tariffs and claims based on state law. Global Crossing believes that SBC's suit is groundless because: (a) Global Crossing is not, directly or indirectly, handing off any traffic to SBC for termination; (b) Global Crossing is not, directly or indirectly, purchasing any terminating access services from SBC; and (c) even if the FCC ultimately agrees with SBC on the first issue (*i.e.*, that carriers such as UniPoint should pay access charges), SBC may collect every penny in access charges to which it would be lawfully entitled under its tariffs from the IXC that is purchasing (or should be regarded as purchasing) terminating access services from SBC – the carrier that carries the traffic into SBC's local exchanges.⁹

The Commission, for the reasons explained below, should find that an IXC that originates an interexchange call, such as Global Crossing and VarTec, is not liable for paying terminating access charges unless it also is the terminating IXC.

⁹ Although the SBC Petition is nominally directed toward the practices of providers such as UniPoint, there is loose language in the SBC Petition that suggests that SBC believes that it may attempt to collect terminating access charges from any one or more of the IXCs in the call path. (SBC also seems to recognize that it should, as Global Crossing believes, only collect terminating access charges from the final IXC. *See* Section III, *infra*.) That is certainly the substance of its suit against Global Crossing. *See, e.g., Southwestern Bell Telephone, LP v. Global Crossing Limited*, No. 4:04cv1573, *Plaintiffs' Opposition to Global Crossing's Motion To Dismiss* at 12 (March 25, 2005) ("According to Global Crossing, while it may have been the first interexchange in the call path, its liability to pay access charges ended when it handed these calls off to another carrier in the chain. But, as described above, the *Access Charge Order* already rejected precisely that argument in connection with services that are identical in all material respects to those that Global Crossing provided."); 16 ("Global Crossing is liable under the *Access Charge Order* precisely because it and the other interexchange carriers with which it contracted failed to purchase from plaintiffs' access tariffs. The purpose of the order is to force these carriers to subscribe to, and thereby become customers of, plaintiffs' access tariffs, even where they might prefer other alternatives.").

Factual Background

SBC's Illustrations 3 and 4 demonstrate the second issue before the Commission.¹⁰ SBC Petition at 10. SBC posits a call flow that is common in the industry, as carriers always seek to route their calls in the most efficient and cost-effective manner. No carrier is ubiquitous and SBC does not suggest that it is somehow improper for one IXC to use another IXC to handle a call en route to its destination. Moreover, as SBC itself candidly concedes, in this call flow, it is the terminating, not the originating, IXC that is responsible for the payment of terminating access charges. Recharacterizing the second IXC as an ESP or "Least Cost Router" or "IP-in-the-Middle" provider has absolutely nothing to do with whether the first IXC is liable for paying terminating access charges.

When Global Crossing, acting as an originating IXC, hands off traffic to another IXC, it conveys responsibility for the calls – including liability for paying terminating access charges when and where owed – to the receiving carrier. That provider, in turn, may hand off calls and associated liabilities to others, or may connect directly to local exchange networks, including those of SBC. The use of such other IXCs to route calls, however, does not impose liability for terminating access charges upon upstream carriers, including an originating IXC, for services that the originating IXC never purchased.

Summary of Argument

The starting point for determining when a carrier is liable for tariffed access charges is an exchange carrier's access tariffs. Under SBC's federal access tariffs, an originating carrier, such as Global Crossing, is not a "customer" of SBC because it never

¹⁰ In SBC's Illustrations 1 and 2 there is only one IXC in the call path. SBC Petition at 9. In that circumstance, it is that IXC alone that is responsible for any originating and terminating access charges that may be applicable to a particular call.

subscribed to or ordered any terminating access services from SBC. Therefore, an originating carrier cannot be liable for terminating access charges. Support for this view also may be found in the filed-tariff doctrine, which would prohibit SBC (or any other local exchange carrier) from collecting access charges in a manner inconsistent with its filed tariffs.

Moreover, the Commission's access charge rules, as interpreted in the *AT&T Order*¹¹ or otherwise do not alter this result. Furthermore, as SBC itself confirms in the SBC Petition, industry practice does not support SBC's litigation position that each and every IXC in the call path is individually, jointly and severally liable for paying terminating access charges.

For these reasons, Global Crossing requests that the Commission find that the liability for paying terminating access charges rests solely on the IXC that delivers an interexchange call into a local exchange area, without regard to how many IXCs are in the call path.

Argument

I. ACCESS TARIFFS DO NOT PERMIT SBC TO COLLECT TERMINATING ACCESS CHARGES FROM A NON-CUSTOMER, SUCH AS AN ORIGINATING IXC.

A. Terminating Access Tariffs Do Not Apply to Originating or Intermediate Carriers, But Only to Terminating IXCs.

The starting point for determining whether a carrier is liable to pay another carrier lies in the filed tariffs of that other carrier. The VarTec Petition recognizes this truism in challenging SBC's assertion that VarTec is responsible for paying terminating access

¹¹ *Petition for Declaratory Ruling That AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, Order, 19 FCC Rcd 7457 (2004) ("AT&T Order").

charges based on SBC's filed tariffs. *See* VarTec Petition at 4. Surprisingly, by contrast, SBC does not even devote *one word* to a description of its own interstate access tariffs.¹² Nowhere does SBC explain how its tariffs apply and, in particular, how they apply to an *originating* IXC. SBC complains that certain parties have “evaded more than \$100 million in SBC ILEC access charges over the last five years, and that amount is growing by more than \$1 million per month.” SBC Petition at 1. At a minimum, SBC should at least discuss its interstate access tariffs, the presumed foundation for that assertion.

Tariffs act as open-ended offers to sell services to any interested party on the same terms and conditions. *See, e.g., Boston & Maine R.R. v. Hooker*, 233 U.S. 97, 112 (1914) (effect of filing schedules of rates “was to make the published rate binding upon shipper and carrier alike . . . to have but one rate, open to all alike from which there could be no departure”). Although a tariff possesses attributes of law, a tariff at bottom defines a contractual relationship, including whether such relationship exists in the first instance. *See MCI Telecomms. Corp. v. Garden State Inv. Corp.*, 981 F.2d 385, 387 (8th Cir. 1992) (in bringing a complaint seeking payment of unpaid charges, the carrier “must establish the applicability and validity of a tariff,” quoting *Ivy Broadcasting Co. v. Am. Tel. & Tel. Co.*, 391 F.2d 486, 494 (2d Cir. 1968)); *Evanns v. AT&T Corp.*, 229 F.3d 837, 840 (9th Cir. 2001) (“the terms of the federal tariff are to be considered ‘the law’ and to therefore ‘conclusively and exclusively determine the rights and liabilities’ *as between the carrier and the customer*” (emphasis supplied, note and citations omitted)).

As the Commission knows and the law makes clear, it is a carrier's tariffs that *exclusively* govern the relationships, if any, between SBC and third parties. This

¹² SBC merely asserts in passing that the duty to pay access charges arises out of its tariffs, but SBC does not argue how or why, based on the language of the tariffs themselves, that is the case. SBC Petition at 32.

fundamental canon of tariff construction is of paramount importance in this proceeding. The Commission is called upon to declare what is the law governing the action pending in the Court, not what the Commission believes it should implement prospectively. The Commission may address the latter issues in any one of a number of pending rulemaking proceedings. It should not do so here.

Thus, in responding to the Petitions and in clarifying the question of which IXC is responsible for paying access charges, the Commission must be guided by the tariffs. On their own terms, however, those tariffs, as VarTec convincingly argues, only apply to SBC's "customers." VarTec Petition at 4. Having reached that conclusion, it becomes equally clear that the originating IXC, whether it be VarTec or Global Crossing or any other IXC upstream from the terminating IXC, is *not* a customer for SBC's terminating access services. *See* VarTec Petition at 3-6.

The term "Customer" is defined in one of SBC's tariffs as:

[a]ny individual, partnership, association, joint-stock company, trust, corporation or governmental entity or any other entity *which subscribes to the services offered under this tariff*, including Interexchange Carriers (ICs) and End Users. (emphasis supplied)

Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, § 2.7 (effective October 16, 1992).¹³ This definition is unambiguous – in order to become a customer (*i.e.*, to accept SBC's offer to purchase its access services), one must "subscribe" to SBC's terminating access services.¹⁴ *Cf. 3 Rivers Tel. Coop., Inc. v. U.S. West Communications, Inc.*, 2003 U.S. Dist. LEXIS 24871, at **27-30 (D. Mont. Aug. 22,

¹³ SBC's other interstate access tariffs contain either the identical or a comparable definition. These definitions are excerpted from the tariffs and are annexed as Exhibit 1.

¹⁴ *See also* VarTec Petition at 4 (setting out requirements of a "customer" under SBC federal access tariff).

2003) (interpreting definition of “Customer” in access tariffs to find that interexchange carrier that hands off traffic to terminating local exchange carrier, and not other carriers, is responsible for payment of terminating access charges).

Originating IXC, such as Global Crossing, however, do not “subscribe” to SBC’s terminating access services. Speaking for Global Crossing, it has no contractual relationship with SBC with respect to the traffic that Global Crossing originates and hands off to other IXCs as set forth in Illustrations 3 and 4.

The importance of focusing on the access tariffs – and whether or not an IXC is a “customer” of a local exchange carrier’s terminating access services – is confirmed by long-standing Commission interpretations of not only its access charge rules but also of local exchange carriers’ interstate tariffs to the effect that they apply only to *customers* who “subscribe” to access services. The Commission has, for example, described its Part 69 rules as follows:

Access services are to be made available to *any customer that chooses to subscribe* to the services for interstate purposes. (emphasis supplied)

Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 1632, 1642 (1997) (citing *Investigation of Access and Divestiture Related Tariffs*, Memorandum Opinion and Order, 97 F.C.C.2d 1082 (1984)); see also *1985 Annual Access Tariff Filings*, Order Designating Issues for Investigation, 1986 FCC LEXIS 3269, at **122-23 (1986) (distinguishing charges applicable to a new access customer of record as opposed to an existing customer that merely changed its name).

Inherent in the concept of “subscribing” is that the subscribing “customer” must have placed an order for the service. Global Crossing, acting as an originating IXC, places no order for terminating access services.¹⁵ Moreover, the tariffs themselves describe the services offered by SBC in ways that confirm that Global Crossing did not “subscribe” to them. The Southwestern Bell Telephone Company tariff cited above, for example, provides that SBC’s access services establish a “two-point communications path between a *customer’s* premises and an end user’s premises.” Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, § 6.1 (effective June 13, 2003) (emphasis supplied); Vartec Petition at 5-6. With respect to the traffic about which SBC complains, however, SBC’s services do not connect *Global Crossing’s* premises to those of the called party (the end user). Rather, SBC’s services connect the terminating interexchange carriers’ facilities, directly or indirectly through competitive local exchange carriers’ facilities, to the end user. SBC Petition at 10. In no sense can it be said, therefore, that Global Crossing or other originating IXCs have subscribed to SBC’s terminating access services. *Cf. United Artists Payphone*, 8 FCC Rcd at 5564 (complainant not a “customer” when it did not order service through presubscription or any other “affirmative selection process”).

The language of SBC’s federal access tariffs is both plain and controlling, and SBC, in assigning responsibility for payment of its charges for terminating access services, should be held strictly to the provisions that it has drafted and that are law.¹⁶

¹⁵ *Cf. United Artists Payphone Co. v. New York Tel. Co.*, Memorandum Opinion and Order, 8 FCC Rcd 5563, 5564 (1993) (“customer” under relevant tariff is one who “orders” the service).

¹⁶ Although Global Crossing believes that the language of SBC’s access tariffs is plain and unambiguous, in the event that the Commission finds those tariff provisions to be ambiguous, it must construe the tariff provisions strictly against SBC, the drafter of the

The Commission should interpret the tariffs to be applicable only to customers who are the IXC's that have subscribed to SBC's access services.¹⁷ Accordingly, the FCC should find that originating IXC's have no liability for paying terminating federal access tariffs when they use other IXC's (including Least Cost Routers) to terminate interexchange calls in a local exchange.

B. The Filed Tariff Doctrine Precludes SBC from Holding a Non-Customer, Such as an Originating IXC, Liable for Terminating Access Charges.

In its Petition, SBC invokes the filed rate doctrine to buttress its argument that certain carriers should not be deemed exempt from paying access charges. *See* SBC Petition at 23, 32. Under that doctrine, filed tariffs govern the rates, terms and conditions of any carrier's tariffed service, here a local exchange carrier's access services. *See, e.g.,* 47 U.S.C. § 203. Global Crossing agrees that SBC's tariffs delimit the boundaries of IXC's obligations to SBC, but it is those very access tariffs that bar SBC from attempting to recover terminating access charges from originating IXC's such as Global Crossing.

The Eleventh Circuit has described the filed tariff doctrine as follows:

The filed rate doctrine (also known as the "filed tariff doctrine") "forbids a regulated entity to charge rates for its services other than those properly filed with the appropriate federal regulatory authority." *Arkansas Louisiana Gas Co.*

tariff. *See, e.g., Union Wire Rope Corp. v. Atchison, T. & S.F. Ry. Co.*, 66 F.2d 965, 967 (8th Cir. 1933); *Commodity News Servs., Inc. v. Western Union*, 29 F.C.C. 1208, 1213, *aff'd*, 29 F.C.C. 1205 (1960) (tariff ambiguity should be construed "against drafter and favorably to users"), *quoted in Associated Press Request for Declaratory Ruling*, 72 F.C.C. 2d 760, 765 (1979).

¹⁷ The Commission has rejected tariffs that seek to hold third parties liable for services that they neither ordered nor wanted. *See, e.g., Halprin, Temple, Goodman & Sugrue v. MCI Telecomms. Co.*, Order on Reconsideration, 14 FCC Rcd 21092, 21096-98 (1999) (reaffirming finding that an MCI tariff that sought to impose certain "non-subscriber" charges was ambiguous and unreasonable); *US West, Tariff F.C.C. Nos. 3 and 5, Trans. No. 629*, Order, 10 FCC Rcd 13708 (1995) (rejecting tariff revisions that would have required Centrex resellers to pay switched access charges, in lieu of less expensive special access charges).

v. Hall, 453 U.S. 571, 577, 101 S. Ct. 2925, 2930, 69 L. Ed. 2d 856 (1981). As it applies to the telecommunications industry, the filed rate doctrine dictates that the rates a carrier charges its customers, once filed with and approved by the FCC, become “the law” and *exclusively govern* the rights and liabilities of the carrier to the customer. (emphasis supplied)

Hill v. BellSouth Telecomms., Inc., 364 F.3d 1308, 1315 (11th Cir. 2004); *accord Evanns*, 229 F.3d at 840 (9th Cir. 1999); *Marcus v. AT&T Corp.*, 138 F.3d 46, 56 (2d Cir. 1998).

The filed tariff doctrine applies not only to the rates that a carrier must charge, but also to the terms and conditions under which it offers its regulated services. *American Tel. & Tel. Co. v. Central Office Tel., Inc.*, 524 U.S. 214 (1998). The central feature of the filed tariff doctrine, as described above, is that the tariff *exclusively governs* the services offered by the carrier pursuant to the tariff, including its relations with customers of those services. “The rights as defined by the tariff cannot be varied or enlarged by either contract or tort of the carrier.” *Keogh v. Chicago & Northwestern R. Co.*, 260 U.S. 156, 163 (1922) (*quoted in Central Office Tel.*, 524 U.S. at 227). Because, as described above, Global Crossing and similarly situated IXCs, when they originate calls, are not customers of SBC, SBC is precluded by the filed rate doctrine from collecting terminating access charges from them.

SBC’s own invocation of the filed tariff doctrine misses the mark. SBC states that the filed tariff doctrine, as purportedly applicable here, would act:

[t]o ensure that the application of access charges to calls carried by multiple service providers [is] necessary to ensure that no carrier [is] placed at a “competitive disadvantage” and “to remedy the current” situation in which some carriers may be paying access charges for those services, while others are not.

SBC Petition at 23, quoting *AT&T Order*, 19 FCC Rcd at 7468.

The *AT&T Order*, however, made clear that calls undergoing no net protocol change are subject to terminating access charges. Therefore, SBC's supposed concerns about competition are fully addressed: all IXCs terminating such traffic are charged equally for terminating access services. This result fully satisfies the "policy of antidiscrimination that is central to the filed rate doctrine." SBC Petition at 21, *citing Central Office Telephone*, 524 U.S. at 223.¹⁸

SBC is only entitled to impose and collect access charges once, that is, from the terminating IXC. Any other result would be inconsistent with SBC's tariffs and, therefore, unlawful under the filed tariff doctrine.

II. THE *AT&T ORDER* DID NOT VARY SBC'S FILED TARIFFS OR THE COMMISSION'S ACCESS CHARGE RULES.

In the *AT&T Order*, the Commission, in deciding which types of calls are subject to access charges, stated that:

[W]hen a provider of IP-enabled voice services contracts with an interexchange carrier to deliver interexchange calls that begin on the [public switched telephone network], undergo no net protocol conversion, and terminate on the [public switched telephone network], the interexchange carrier is obligated to pay terminating access charges. Our analysis in this order *applies to services* that meet these criteria regardless of whether only one interexchange carrier uses IP transport or instead *multiple service providers* are involved in providing IP transport. (emphasis supplied; notes omitted)

AT&T Order, 19 FCC Rcd at 7470. From this statement, SBC suggests that the Commission intended to overturn fundamental principles of interpretation of access

¹⁸ Moreover, if SBC is correct on this score, it may recover all terminating access charges to which it is lawfully entitled from its customers – the terminating IXCs. If SBC is incorrect as to its characterization of IP-transport providers, however, then SBC is not entitled to any access charges on this traffic and not a penny of its terminating access charges has been "evaded."

tariffs and held that all IXCs in a call path, including the originating IXC, are liable to pay for the use by the terminating IXC of access termination services. Commission authority makes it abundantly clear, however, that the *AT&T Order* in no respect altered the relationships – financial or otherwise – between SBC, as a local exchange carrier, and originating IXCs.

First, nothing in the *AT&T Order* expressly or implicitly varies the tariffs on file with this Commission. Nor can the *AT&T Order* reasonably be read to apply to entities that are concededly not “customers” within the meaning of SBC’s access tariffs. Even if the Commission had, however, wished to effect such a profound amendment to the language of SBC’s access tariffs, it would not have been able to do so upon a petition for declaratory ruling (such as the *AT&T Order*). Instead, it would have had to follow the procedures set forth in sections 203-205 of the Communications Act. *See American Tel. and Tel. Co. v. FCC*, 487 F.2d 865, 873-75, 880-81 (2d Cir. 1973) (Commission must follow statutory provisions for carrier-initiated rate revisions); *American Tel. and Tel. Co. v. FCC*, 449 F.2d 439, 450 (2d Cir. 1971) (in prescribing a carrier’s rates and practices under § 205(a), Commission must specifically find that the rate is “just and reasonable”). Of course, the Commission did no such thing in the *AT&T Order*, nor was there any reason for such action. The relevant provisions of SBC’s tariffs have been in effect for years. Nothing in the *AT&T Order* purports to alter the unambiguous meaning of these tariff provisions.

Second, the Commission’s could not, in any event, have altered its principal rule relating to access charges – 69.5(b)¹⁹ – through the *AT&T Order*. That rule, invoked by

¹⁹ 47 C.F.R. § 69.5(b).

SBC in the SBC Petition, provides that access charges apply to “interexchange carriers that use local switching facilities for the provision of interstate or foreign telecommunications services.” *See AT&T Order*, 19 FCC Rcd at 7470 n.80 (citing 47 C.F.R. § 69.5(b)).²⁰ The Commission further cited to Rule 69.5(b) to distinguish those entities that are *not* subject to access charges – in this context, other local exchange carriers – from those entities that are – in this case, certain interstate providers of interexchange services. *AT&T Order*, 19 FCC Rcd at 7471 n.92.²¹ Neither the *AT&T Order* nor Rule 69.5(b) supports SBC’s novel proposition that every IXC that touches a call is individually, jointly and severally liable for the payment of terminating access charges.

Third, even if the *AT&T Order* could have effected a change in filed tariffs and existing Commission regulations (which it did not do and could not have done), it did not *sub silentio* create a new regime of individual, joint and several liability for all IXCs in the call path. Notwithstanding SBC’s arguments to the contrary, the *AT&T Order* dealt only with the question of whether the mere use of IP in the middle of a call path – whether by one or more IXCs – precludes a local exchange carrier from collecting a terminating access charge for terminating the call. The FCC held that it did not. The

²⁰ SBC also relies upon the definition of “interexchange” contained in section 69.2(s) of the Commission’s rules (“services and facilities provided as an *integral part* of interstate or foreign telecommunications” (emphasis supplied) to support its novel proposition of joint and several liability. *See* SBC Petition at 3, 19. That definition merely distinguishes “interexchange” from “exchange” and, like section 69.5, says nothing about *which interexchange carrier* is responsible for the payment of terminating access charges.

²¹ When more than one LEC is involved in the provision of access services to an IXC, each LEC is entitled to receive access charges under provisions of their respective access tariffs governing jointly provided access services. *See, e.g.,* Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, § 2.6, annexed hereto as Exhibit 2. In this portion of the *AT&T Order*, the Commission was merely making clear that neither of the two exchange carriers was responsible for paying the other exchange carrier’s access charges. In reaching this conclusion, the Commission merely applied existing law and did not break any new ground.

FCC should reject SBC's interpretation of the *AT&T Order* and clarify in this proceeding that originating IXC's, which hand off responsibility for call termination to other IXC's, are not liable for paying terminating access charges (whether "IP-in-the-Middle" or not).

III. INDUSTRY PRACTICE CONFIRMS THAT TERMINATING ACCESS CHARGES MAY NOT BE COLLECTED FROM A NON-CUSTOMER.

In its petition, SBC cites to "industry practice" as a basis for holding the IP-transport providers liable for terminating access charges. See SBC Petition at 3, 21. Even if industry practice could vary the terms of SBC's interstate access tariffs – which it cannot – industry practice itself demonstrates that it is the *terminating* – not the *originating* – IXC that is responsible for paying charges for terminating access services. As SBC itself observes:

Industry practice confirms that wholesale transmission providers using IP technology are "interexchange carriers" under Rule 69.5 when transporting interexchange traffic between points of origination and termination on the PSTN. As noted above, retail providers of interexchange telephone service routinely rely upon wholesale providers of long distance transmission in order to terminate interexchange calls. Where they do so – and where the wholesale provider uses IP technology and does not misroute the call through a CLEC – access charges are routinely assessed on *the wholesale provider*. Dignan Decl. ¶ 6.

The same result applies here. Where a provider such as PointOne [UniPoint] provides wholesale transmission of an ordinary PSTN-to-PSTN call, it stands in the same shoes as any other carrier that performs the same task, and it accordingly must be treated the same as those other carriers. (emphasis in original)

SBC Petition at 21.

Indeed, the declaration submitted by Robert A. Dignan, the General Manager-Fraud Detection and Prevention for SBC Operations, Inc., submitted in support of the SBC Petition, confirms what is common industry practice. It bears repeating here

because it so persuasively undercuts the argument that SBC is making before the Commission and before the Court in the action against Global Crossing:

SBC's tariffs require that interexchange calls be terminated over Feature Group D facilities, regardless of whether the company that is terminating the interexchange calls to an SBC local network is the originating long-distance carrier or, instead, is carrying the calls "downstream" from the originating carrier. *In the latter situation – where multiple carriers are involved – the SBC local exchange carrier typically bills access charges to the last company in the stream that carries the interexchange calls . . . and it is this company that remits payment for the access charges to the SBC local exchange carrier* This is the common practice in the telecommunications industry, and legitimate downstream carriers of interexchange calls – i.e., carriers that provide wholesale transmission to other carriers – have understood and followed it for years. (emphasis supplied)

SBC Petition, Exhibit D, Declaration of Robert A. Dignan, at 4.

Global Crossing could not have set forth its own arguments more convincingly than as they are made in the SBC Petition and the Declaration of Mr. Dignan. In the very scenario in which SBC claims it may recover charges for terminating access services from multiple IXCs, industry practice, in fact, confirms that terminating access charges are assessed only once, on the terminating IXC carrier (which, as Mr. Dignan points out, *may* also be the originating carrier where the IXC is responsible for carrying the call from the originating exchange carrier to the terminating exchange carrier). As SBC forthrightly acknowledges, it is the wholesale (terminating) IXC that is responsible for paying charges for terminating access. Equally important, SBC itself concedes that the originating (retail) IXC is not responsible for such charges (except where it is also the terminating IXC). *Id.*²²

²² This concession, however, is nothing more than a restatement of how long distance resale operates. Courts have long recognized that the use of least-cost routing can be integral to the handling of a long distance call. *See, e.g., United States v. Western Elec. Co.*, 673 F.

Indeed, this is Global Crossing's (and other IXC's and exchange carriers') practice. When originating IXC's purchase wholesale long distance services from other IXC's, the prices that they pay for such services include the wholesale carrier's cost of paying for terminating access. The exchange carriers look to their customers – the wholesale interexchange providers – for payment of charges for terminating access services. Conversely, when a carrier (such as Global Crossing) sells wholesale interexchange termination services, it is responsible for paying the relevant charges for access termination and it then recovers those costs from its customers. The exchange carriers, in this circumstance, assess terminating access charges on Global Crossing, *not* Global Crossing's customers.²³

What SBC cannot point to – because it does not exist – is *any* practice under which multiple IXC's may be held responsible for paying charges for terminating access services. Industry practice merely confirms common sense and what SBC's access tariffs require, namely that each IXC is responsible for those services it actually purchases –

Supp. 525, 540-41 n.69 (D.D.C. 1987) (“Interexchange services include both facilities-based services and the resale of the service of others. They are not limited to transmission, but in certain contexts include related activities such as interexchange traffic routing, the selection of interexchange carriers through *least-cost routing*” (emphasis supplied)). Indeed, the use by one long distance company of the services offered by another is simply one form of resale, a practice that the FCC not only has long encouraged but also as to which it prohibits unreasonable restrictions by carriers. See *Resale and Shared Use of Common Carrier Services and Facilities*, 60 F.C.C.2d 261 (1976), *aff’d sub nom., American Tel. & Tel. Co. v. FCC*, 572 F.2d 17 (2d Cir. 1977) (affirming FCC decision which required carriers to eliminate tariff restrictions on resale and shared use). Resale is identical to the call flows discussed in SBC’s Illustrations 3 and 4: an originating IXC’s reseller’s end-user customer places a call that the originating local exchange carrier picks up, the originating LEC delivers the call to the reseller’s switch, the reseller hands the call off to the originating IXC (such as Global Crossing), which, in turn, delivers the call to the area where the called party lives and hands the call off to the terminating LEC, which then completes the call to the called party. In this scenario, only Global Crossing, as the carrier directly interfacing with the terminating exchange carrier, would have the responsibility to pay for terminating access services.

²³ Alternatively, when Global Crossing sells wholesale *origination* services, it is responsible for applicable origination charges, but its customers are responsible for charges for termination (including for terminating access services).

originating access charges, if applicable, by the originating IXC and terminating access charges, if applicable, by the terminating IXC.

Conclusion

For the foregoing reasons, the Commission should act upon the SBC and VarTec Petitions in the manner suggested herein.

Respectfully submitted,

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Attorney for Global Crossing
Telecommunications, Inc.

November 10, 2005

EXHIBIT 1

Exhibit 1

Index of Tariff Excerpts

Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, §2.7

Pacific Bell Telephone Company, Tariff F.C.C. No. 1, § 2.6

Nevada Bell Telephone Company, Tariff F.C.C. No. 1, § 2.6

Ameritech Operating Companies, Tariff F.C.C. No. 2, § 2.6

**The Southern New England Telephone Company, Tariff F.C.C.
No. 39, § 2.13**

ACCESS SERVICE

2. General Regulations (Cont'd)

2.7 Definitions (Cont'd)

Communications System

Denotes channels and other facilities which are capable, when not connected to the Telecommunications Network, of two-way communications between customer provided terminal equipment.

Confirmed Due Date

Denotes the date provided by the Telephone Company on which work activity is scheduled to be completed and the service is available for use by the customer.

(N)

(N)

Connecting Facility Assignment (CFA)

Denotes a code that identifies the Exchange Company carrier system and channel to be used from a Wide Band Analog or a High Capacity Facility.

Customer(s)

Denotes any individual, partnership, association, joint-stock company, trust, corporation or governmental entity or any other entity which subscribes to the services offered under this tariff, including both Interexchange Carriers (ICs) and End Users.

Customer Carrier Name Abbreviation (CCNA)

Denotes a three alpha character code that identifies the Access Customer submitting the Access Order and receiving confirmation of the Order.

Customer Circuit Reference (CKR)

Denotes a circuit number or range of circuit numbers assigned, administered and utilized by the customer as a cross reference to the Telephone Company's circuit numbers.

Customer Signaling Point Code (CSPC)

Denotes the code that identifies the customer's signaling point in the CCS network.

(This page filed under Transmittal No. 2223)

Issued: September 1, 1992

Effective: October 16, 1992

1010 Pine Street, St. Louis, Missouri 63101

ACCESS SERVICE

2. General Regulations (Cont'd)

2.6 Definitions (Cont'd)

Customer(s)

The term "Customer(s)" denotes any individual, partnership, association, joint-stock company, trust corporation, or governmental entity or any other entity which subscribes to the Services offered under this tariff, including Interexchange Carrier (IC's), End Users, and Collocators.

Customer Access Billing System (CABS)

The "Customer Access Billing System (CABS)" denotes a mechanized billing system which bills large and small interexchange customers for access to our local exchange network. These customers are billed from the access tariffs filed with the FCC and local PUCS.

Customer Record Information Systems (CRIS)

The "Customer Record Information Systems (CRIS)" denotes a computer system which maintains a database of up-to-date customer information. The system can interface with other application systems requiring this type of information.

Data Base - 800 Access Service

Data Base 800 Access Service consists of regional data bases that contain call-processing information specified by 800 Access Service customers. The database contains the customer record information necessary to perform carrier identification and 800 number translation.

(N)
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(N)

(This page filed under Transmittal No. 23)

Issued: November 16, 2000

Effective: December 1, 2000

One Bell Plaza, Dallas, Texas 75202

ACCESS SERVICE

2. General Regulations (Cont'd)2.6 Definitions (Cont'd)Conventional Signaling

Conventional Signaling has been traditionally used in North America for the purpose of transmitting the called number's address digits from the originating end office. In this system, all of the dialed digits are received by the originating switching machine, a path is selected, and the sequence of supervisory signals and outpulsed digits is initiated. No overlap outpulsing ten digit ANI, ANI information digits, or acknowledgement wink are included in this signaling sequence.

Customers

The term "Customer(s)" denotes any individual, partnership, association, joint-stock company, trust corporation, or governmental entity or any other entity which subscribes to the Services offered under this tariff, including both Interexchange Carrier (IC's) and End User.

Customer Access Billing System (CABS)

The term "Customer Access Billing System (CABS)" denotes a mechanized billing system which bills large and small interexchange customers for access to our local exchange network. These customers are billed from the access tariffs filed with the FCC and local PUCS.

Customer Record Information Systems (CRIS)

The term "Customer Record Information Systems (CRIS)" denotes a computer system which maintains a database of up-to-date customer information. The system can interface with other application systems requiring this type of information.

Data Base - 800 Access Service

Data Base 800 Access Service consists of regional data bases that contain call-processing information specified by 800 Access Service customers. The data base contains the customer record information necessary to perform carrier identification and 800 number translation.

Data Transmission (107 Type) Test Line

The term "Data Transmission (107 Type) Test Line" denotes an arrangement which provides for a connection to a signal source which provides test signals for one-way testing of data and voice transmission parameters.

(This page filed under Transmittal No. 1)

Issued: February 16, 2001

Effective: March 3, 2001

One Bell Plaza, Dallas, Texas 75202

ACCESS SERVICE

2. General Regulations (Cont'd)

2.6 Definitions (Cont'd)

Commingling⁽¹⁾ - Commingling means the connecting, attaching or otherwise linking of an unbundled network element, or a combination of unbundled network elements, to one or more facilities or services that a requesting telecommunications carrier has obtained at wholesale from the Telephone Company, or the combining of an unbundled network element, or a combination of unbundled network elements with one or more such facilities or services. Commingling means the act of commingling.

Committed Information Rate (CIR)- A statistically guaranteed level of transmission or guaranteed bandwidth that the Ethernet network will provide to the Basic Connection when information (or data) needs to be transmitted.

Common Channel Signaling Network - a digital data network carrying signaling, routing, and control information which interfaces with the voice/data network.

Common Line - a line, trunk, pay telephone line or other facility provided under the general and/or local exchange service tariffs of the Telephone Company, terminated on a central office switch. A common line-residence is a line or trunk provided under the residence regulations of the general and/or local exchange service tariffs. A common line-business is a line provided under the business regulations of the general and/or local exchange service tariffs.

Communications System - channels and other facilities which are capable of communications between terminal equipment provided by other than the Telephone Company.

Connecting Facility Assignment - a facility identification of the channel of a high capacity service on which a slower speed service rides.

Customer(s) - any individual, partnership, association, joint-stock company, trust, corporation, or governmental entity or any other entity which subscribes to the services offered under this tariff, including both Interexchange Carriers (ICs) and End Users.

Data Terminating Equipment (DTE) - in PSN service, devices (such as terminals, clusters of terminals or a host computer) on the customer's premises, which transmit or receive asynchronous, synchronous, character or bit-oriented data messages.

⁽¹⁾ In the event the Commission or a court, pursuant to any regulatory or judicial review of the Commission's *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket No. 01-338, FCC 03-36, para. 581 (released Aug. 21, 2003) (*Triennial Review Order*), vacates, stays, remands, reconsiders, or rejects the portion of the Triennial Review Order requiring ILECs to permit commingling, the terms and conditions of this tariff authorizing commingling, which are identified with a footnote, shall cease to be effective as of the effective date of the Commission order or the issuance of the court's mandate. In that event, the Telephone Company will provide customers that have commingled UNE(s) and/or UNE Combination(s) with wholesale services obtained under this Tariff written notice that, within 30 days, customers must either convert such UNE(s) or UNE Combination(s) to a comparable service, or disconnect such UNE(s) and/or UNE Combination(s) from those wholesale services. Failure to provide the Telephone Company instructions to convert or disconnect such UNE(s) and/or UNE Combination(s) within 30 days, as described above, shall be deemed authorization to convert the UNE(s) and/or UNE Combination(s) to comparable access services at month-to-month rates.

(7)

(This page filed under Transmittal No. 1424)

Issued: November 19, 2004

Effective: December 4, 2004

One SBC Plaza, Dallas, Texas 75202

ACCESS SERVICE

2.13 Definitions (Cont'd)

Common Line

The term "Common Line" denotes a line, trunk, public telephone line or other facility provided under the general and/or local exchange service tariffs of the Telephone Company, terminated on a central office switch. A common line-residence is a line or trunk provided under the residence regulations of the general and/or local exchange service tariffs. A common line-business is a line provided under the business regulations of the general and/or local exchange service tariffs.

Communications System

The term "Communications System" denotes channels and other facilities which are capable of communications between terminal equipment provided by other than the Telephone Company.

Confirmed Service Date

The term "Confirmed Service Date" denotes the date on which work activity is scheduled to be completed by the Telephone Company and the service is ready for use by the customer. The Confirmed Service Date is provided by the Telephone Company to the customer.

(N)
|
(N)

Customer(s)

The term "Customer(s)" denotes any individual, partnership, association, joint-stock company, trust, corporation, or governmental entity or other entity which subscribes to the services offered under this tariff, including both Interexchange Carriers (IC) and End Users.

Data Transmission (107 Type) Test Line

The term "Data Transmission (107 Type) Test Line" denotes an arrangement which provides for a connection to a signal source which provides test signals for one-way testing of data and voice transmission parameters.

Decibel

The term "Decibel" denotes a unit used to express relative difference in power, usually between acoustic or electric signals, equal to ten (10) times the common logarithm of the ratio of two signal powers.

Decibel Reference Noise C-Message Weighting

The term "Decibel Reference Noise C-Message Weighting" denotes noise power measurements with C-Message Weighting in decibels relative to a reference 1000 Hz tone of 90 dB below 1 milliwatt.

(This Page Filed Under Transmittal No. 587)

Issued: November 15, 1993

Effective: December 30, 1993

Vice President
530 Preston Avenue, Meriden, CT 06450

(T)
(T)

EXHIBIT 2

ACCESS SERVICE

2. General Regulations (Cont'd)2.6 Jointly Provided Access Services

Jointly Provided Access Service has one end of the service in one exchange telephone company operating territory and the other end of the service in another exchange telephone company operating territory. When Access Service, other than MicroLink II⁽¹⁾, is jointly provided, the exchange telephone companies involved will agree upon a billing, design and ordering arrangement which is consistent with the provisions contained in this section and the Ordering and Billing Forum Standards, Multiple Exchange Carrier Access Billing (MECAB) and Multiple Exchange Carrier Design and Ordering (MECOD). Customers who want to receive these documents may obtain ordering information from the Reference to Technical Publications section of this tariff. Prior to implementation of, or changes to these billing arrangements, the exchange telephone companies involved will give the affected customers 30 days notice. (C)

The type of billing arrangement utilized for jointly provided access service is dependent upon the type of access service provided. Feature Group A (FGA) and Circuit Switched Line Side (BSA-A) Switched Access Services are provided under the Single Bill Arrangement as set forth in 2.6.1 following. Feature Groups B, C and D (FGB, FGC and FGD) and BSA-B, BSA-C, BSA-D, Direct-Trunked Transport, Tandem-Switched Transport, DNAL Switched Access, Special Access, MegaLink Custom, Self-Healing Transport Network (STN) and Directory Assistance Services are provided under Meet Point Billing (MPB) Arrangements. MPB allows each involved exchange telephone company to provide service and bill for the portion of the access service that is rendered under its own tariff. Meet Point Billing is provided as either a Single Bill-Single Tariff MPB Arrangement or a Multiple Bill MPB Arrangement as specified in 2.6.2 and 2.6.3 respectively.

At the time an order is placed, the customer will be notified of the arrangement which will apply and any pertinent information pertaining thereto. For example, the customer will be notified as to the entity responsible for receipt of payment, answers to billing inquiries, adjustments to bills, etc.

(1) As of October 6, 2004, MicroLink II service utilizing the X.75 protocol is obsolete and limited to existing installations, at existing locations, for existing customers. (N)
(N)
(N)

(This page filed under Transmittal No. 3008)

Issued: September 21, 2004

Effective: October 6, 2004

One SBC Plaza, Dallas, Texas 75202

ACCESS SERVICE

5. Ordering for Access Service (Cont'd)5.2 Access Order5.2.1 Ordering Conditions (Cont'd)

Except as provided below, the Telephone Company shall permit a requesting telecommunications carrier to commingle an unbundled network element or a combination of unbundled network elements with wholesale services obtained from the Telephone Company, to the extent provided by and subject to the terms and conditions of the requesting telecommunications carrier's interconnection agreement with the Telephone Company (or, if applicable, of the Telephone Company intrastate tariffs).⁽¹⁾

The Telephone Company need not provide access to (1) an unbundled DS1 loop in combination, or commingled, with a dedicated DS1 transport or dedicated DS3 transport facility or service, or to an unbundled DS3 loop in combination, or commingled, with a dedicated DS3 transport facility or service, or (2) an unbundled dedicated DS1 transport facility in combination, or commingled, with an unbundled DS1 loop or a DS1 channel termination service, or to an unbundled dedicated DS3 transport facility in combination, or commingled, with an unbundled DS1 loop or a DS1 channel termination service, or to an unbundled DS3 loop or a DS3 channel termination service, unless the requesting telecommunications carrier certifies that all of the following conditions are met⁽¹⁾

- (1) The requesting telecommunications carrier has received state certification to provide local voice service in the area being served or, in the absence of a state certification requirement, has complied with registration, tariffing, filing fee, or other regulatory requirements applicable to the provision of local voice service in that area.
- (2) The following criteria are satisfied for each combined circuit, including each DS1 circuit, each DS1 enhanced extended link, and each DS1-equivalent circuit on a DS3 enhanced extended link:
 - (i) Each circuit to be provided to each end user customer will be assigned a local number prior to the provision of service over that circuit;
 - (ii) Each DS1-equivalent circuit on a DS3 enhanced extended link must have its own local number assignment, so that each DS3 must have at least 28 local voice numbers assigned to it;

⁽¹⁾ In the event the Commission or a court, pursuant to any regulatory or judicial review of the Commission's Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket No. 01-338, FCC 03-36, para. 581 (released Aug. 21, 2003) (Triennial Review Order), vacates, stays, remands, reconsiders, or rejects the portion of the Triennial Review Order requiring ILECs to permit commingling, the terms and conditions of this tariff authorizing commingling, which are identified with a footnote, shall cease to be effective as of the effective date of the Commission order or the issuance of the court's mandate. In that event, the Telephone Company will provide customers that have commingled UNE(s) and/or UNE Combination(s) with wholesale services obtained under this Tariff written notice that, within 30 days, customers must either convert such UNE(s) or UNE Combination(s) to a comparable service, or disconnect such UNE(s) and/or UNE Combination(s) from those wholesale services. Failure to provide the Telephone Company instructions to convert or disconnect such UNE(s) and/or UNE Combination(s) within 30 days, as described above, shall be deemed authorization to convert the UNE(s) and/or UNE Combination(s) to comparable access services at month-to-month rates.

(T)

(This page filed under Transmittal No. 3018)

Issued: November 19, 2004

Effective: December 4, 2004

One SBC Plaza, Dallas, Texas 75202

ACCESS SERVICE

5. Ordering for Access Service (Cont'd)5.2 Access Order5.2.1 Ordering Conditions (Cont'd)

- (iii) Each circuit to be provided to each end user customer will have 911 or E911 capability prior to the provision of service over that circuit;
- (iv) Each circuit to be provided to each end user customer will terminate in a collocation arrangement that meets the requirements detailed below;
- (v) Each circuit to be provided to each end user customer will be served by an interconnection trunk that meets the requirements detailed below;
- (vi) For each 24 DS1 enhanced extended links or other facilities having equivalent capacity, the requesting telecommunications carrier will have at least one active DS1 local service interconnection trunk that meets the requirements detailed below; and
- (vii) Each circuit to be provided to each end user customer will be served by a switch capable of switching local voice traffic.

A collocation arrangement meets the requirements in (iv) above if it is:

- (1) Established pursuant to section 251(c)(6) of the Act and located at the Telephone Company's premises within the same LATA as the customer's premises, when the Telephone Company is not the collocater; and
- (2) Located at a third party's premises within the same LATA as the customer's premises, when the Telephone Company is the collocater.

An interconnection trunk meets the requirements of (v) and (vi) above in this certification if the requesting telecommunications carrier will transmit the calling party's number in connection with calls exchanged over the trunk and the trunk is located in the same LATA as the customer premises served by the EEL.⁽¹⁾

⁽¹⁾ In the event the Commission or a court, pursuant to any regulatory or judicial review of the Commission's Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket No. 01-338, FCC 03-36, para. 581 (released Aug. 21, 2003) (Triennial Review Order), vacates, stays, remands, reconsiders, or rejects the portion of the Triennial Review Order requiring ILECs to permit commingling, the terms and conditions of this tariff authorizing commingling, which are identified with a footnote, shall cease to be effective as of the effective date of the Commission order or the issuance of the court's mandate. In that event, the Telephone Company will provide customers that have commingled UNE(s) and/or UNE Combination(s) with wholesale services obtained under this Tariff written notice that, within 30 days, customers must either convert such UNE(s) or UNE Combination(s) to a comparable service, or disconnect such UNE(s) and/or UNE Combination(s) from those wholesale services. Failure to provide the Telephone Company instructions to convert or disconnect such UNE(s) and/or UNE Combination(s) within 30 days, as described above, shall be deemed authorization to convert the UNE(s) and/or UNE Combination(s) to comparable access services at month-to-month rates.

(T)

(This page filed under Transmittal No. 3018)

Issued: November 19, 2004

Effective: December 4, 2004

One SBC Plaza, Dallas, Texas 75202

ACCESS SERVICE

6. Switched Access Service (Cont'd)6.1 General Description

Switched Access Service provides a two-point communications path between a customer's premises and an end user's premises through the use of common terminating, common switching, Switched Transport facilities, and common subscriber plant of the Telephone Company. Switched Access Service provides for the ability to originate calls from an end user's premises to a customer's premises, and to terminate calls from a customer's premises to an end user's premises in the LATA where service is provided.

Rates and charges for Switched Access/Dedicated Transport are set forth in Section 6.9 following, with the exception of the services provided by the Telephone Company in the Metropolitan Statistical Areas (MSAs) in which the Telephone Company has received Phase II pricing flexibility pursuant to Subpart H of Part 69 of the Commission's Rules. The rates and charges for the Switched Access/Dedicated Transport services in the MSAs that have received Phase II pricing flexibility are set forth in Section 39.

When Expanded Interconnection replaces some of the Telephone Company provided flat-rated Switched Transport Services (i.e., Entrance Facility, Direct-Trunked Transport, between the serving wire center and the access tandem), Switched Access service will include the Switched Transport services and features not provided by the interconnector. When Expanded Interconnection replaces all of the Telephone Company provided flat-rated Switched Transport services, Switched Access Service will include only the common terminating, common switching, common subscriber plant, and the usage-rated Switched Transport Services (i.e., Tandem Switching and Tandem-Switched Transmission/Common Transport) that may be necessary to provide a complete two-point communications path between the customer's premises and the end office where calls are switched to originate or terminate.

When Expanded Interconnection replaces all of the Telephone Company's interoffice transport, mileage measurement will not apply. When Expanded Interconnection replaces only a portion of the Telephone Company's interoffice transport, mileage will be calculated using the V&H coordinates of the wire center housing the Expanded Interconnection arrangement and the wire center where the Telephone Company provided transport either originates or terminates.

(This page filed under Transmittal No. 2951)

Issued: May 29, 2003

Effective: June 13, 2003

One SBC Plaza, Dallas, Texas 75202

Certificate of Service

I hereby certify that, on this 10th day of November, 2005, copies of the foregoing Comments of Global Crossing Telecommunications, Inc. were served by first-class mail, postage prepaid, upon:

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Chief Legal Officer
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/s/ Michael J. Shortley, III
Michael J. Shortley, III